1995

State of Utah v. Dax Brant Hammer : Reply Brief

Utah Court of Appeals

Gary W. Pendleton. Attorney for Appellant.
J. Kevin Murphy, Jan Graham. Attorneys for Appellee.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	)	
Plaintiff and Appellee,	)	Case No. 950380-CA
vs.	)	
DAX BRANT HAMMER,	)	Priority No. 2
Defendant and Appellant.	)	

REPLY BRIEF

APPEAL FROM CONVICTION OF ATTEMPTED BURGLARY, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. §§76-6-202, 76-4-101, AND 76-4-102, IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR WASHINGTON COUNTY, JAMES L. SHUMATE PRESIDING

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REPLY BRIEF

ARGUMENT

POINT

ACTON DOES NOT SUPPORT THE STATE'S POSITION

The state fails to recognize the fact that the pivotal issue on this appeal is whether or not the defendant is required to submit to warrantless searches by police. Appellant's Br. at 10-14. Defendant relies on State v. Velasquez, 672 P.2d 1254 (Utah 1983), for the proposition that any rule of law placing limitations upon a probationer's Fourth Amendment rights vis-s-vis his probation officer "does not mean that police officers may engage in warrantless searches on the same basis as [probation] officers." Id. at 1262.

The state argues that there is no "reasonable grounds" prerequisite in the context of probation searches, contending that, while Griffin v. Wisconsin, 483 U.S. 868 (1987), did not answer this "question," Vernonia School District 47J v. Acton, ____ U.S. ____ 115 S.Ct. 2386 (1995), has now "tacitly" held that in the context of "special needs," the

"reasonableness" analysis does not involve "reasonable suspicion." Appellee's Br. at 11-21.

The state's argument completely fails to demonstrate why the state's legitimate interest in the supervision of probationers, whether or not the standards of supervision are based upon suspicion, extends so as to authorize warrantless searches by police. Surely, the state does not contend that student athletes in Vernonia School District 47J are subject to warrantless, suspicionless searches by police.

CONCLUSION

It is respectfully submitted that that portion of the defendant's probation order purporting to require defendant to submit to warrantless searches by peace officers must be vacated and set aside as an infringement of the Fourth Amendment rights defendant enjoys as a probationer.

RESPECTFULLY SUBMITTED this 8th day of December, 1995.

/S/
Gary W. Pendleton
Attorney for Defendant and Appellant

MAILING CERTIFICATE

I do hereby certify that on this 8th day of December, 1995, I did personally mail two true and correct copies of the above and foregoing document to J. Kevin Murphy, Assistant Attorney General, 124 State Capitol, Salt Lake City, Utah 84114.

/S/
Gary W. Pendleton